

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of	)	
	)	
Fox Networks Group, Inc. (MundoFox)	)	MB Docket No. 12-31
	)	
Petition for Waiver of Section 73.658(i)	)	
of the Commission's Rules	)	

**ORDER**

**Adopted: May 10, 2012**

**Released: May 10, 2012**

By the Chief, Media Bureau:

1. Fox Networks Group, Inc. ("Fox") filed a petition "on behalf of MundoFox Broadcasting LLC and its expected affiliate station partners" seeking a permanent waiver of Section 73.658(i) of the Commission's rules ("Petition"),<sup>1</sup> which prohibits broadcast stations from being represented by their affiliated networks in the spot sales television advertising market.<sup>2</sup> The Petition is unopposed. For the reasons outlined below, the Bureau grants the Petition for Waiver.

2. In the Petition, Fox states that it is in the process of assembling affiliates nationally to air the content of a new Spanish-language video programming service called MundoFox, and proposes that Fox represent the new network and its affiliates in the sale of both network and spot advertising.<sup>3</sup> It argues that waiver of the "network representation" rule would serve the public interest, as it would foster new entry and competition in the Spanish-language television market.<sup>4</sup> Furthermore, Fox argues that the waiver is necessary to ensure a level playing field by holding MundoFox to the same regulatory requirements of its established competitors<sup>5</sup> in the U.S. Spanish-language broadcast television market, because the Commission has previously granted permanent waivers of this rule to the operators of other

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<sup>1</sup> Fox Networks Group, Inc. *Petition for Waiver of the Network Representation Rule and Request for Expedited Action* at 1 (filed January 23, 2012) ("Petition"). The Bureau released a Public Notice in which it sought comment on the Petition. *Public Notice*, Comment Dates Established for Fox Petition for Expedited Waiver of 47 C.F.R. § 73.658(i), the Network Representation Rule, MB Docket No. 12-31, DA 12-153 (rel. Feb. 6, 2012). Three supportive comments were filed by "charter affiliates" of the MundoFox network. Comments of Meruelo Media Holdings LLC (March 7, 2012); Comments of Hero Licenseco LLC (March 7, 2012); Comments of Cocola Broadcasting Companies, LLC (March 13, 2012).

<sup>2</sup> Section 73.658(i) of the Commission's Rules, 47 C.F.R. § 73.658(i), provides that:

No license shall be granted to a television broadcast station which is represented for the sale of non-network time by a network organization or by an organization directly or indirectly controlled by or under common control with a network organization, if the station has any contract, arrangement or understanding, express or implied, which provides for the affiliation of the station with such network organization: *Provided, however*, That this rule shall not be applicable to stations licensed to a network organization or to a subsidiary of a network organization.

<sup>3</sup> Petition at 1, 3-4.

<sup>4</sup> *Id.* at 1-2.

<sup>5</sup> *Id.* at 2.

national Spanish-language networks.<sup>6</sup>

3. In the *Univision and Telemundo Waiver Order*, the Commission relied upon Univision's statement that traditional national sales firms lack "the specialized skill and experience required to market successfully Spanish-language television," and Telemundo's argument that Spanish-language stations "cannot themselves effectively secure national spot advertising sales."<sup>7</sup> In the waiver orders granted since then,<sup>8</sup> the Media Bureau relied on similar assertions.<sup>9</sup> In each case, the evidence before the Commission supported the petitioners' argument that waiver of the network representation rule had been and would be beneficial to the development of foreign language networks,<sup>10</sup> which provide important public benefits, including "encouraging the growth and development of new networks; fostering foreign-language programming; increasing programming diversity; [and] strengthening competition among stations."<sup>11</sup>

4. Fox contends that, absent grant of a waiver of the network representation rule, MundoFox and its affiliates would "face a potentially debilitating disadvantage" in competition with existing Spanish-language broadcast networks and their affiliates, all of which operate without the restrictions of the network representation rule.<sup>12</sup> In particular, Fox argues that any new Spanish-language network must contend not only with "a market that continues to be dominated by Univision and Telemundo,"<sup>13</sup> but also with English language stations in the same markets that "benefit from substantial economic advantages" in the ad sales markets.<sup>14</sup> Furthermore, Fox argues that grant of the waiver will result in the same public interest benefits that the Commission found in waiving the rule for other Spanish-language networks.<sup>15</sup> Specifically, Fox contends that the waiver will strengthen the network's chances for long-term success by allowing it to "to offer affiliates the same full representation package provided by other Spanish-language

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<sup>6</sup> *Id.* at 3, n.7. See *Amendment of § 73.658(i) of the Commission's Rules*, BC Docket No. 78-309, Report and Order, 5 FCC Rcd 7280 (1990) (*Univision and Telemundo Waiver Order*) (granting permanent waivers of the rule to stations affiliated with networks including Univision Communications, Inc. and Telemundo Group, Inc.); *Azteca International Corporation Petition for Waiver of Section 73.658(i) of the Commission's Rules*, Broadcast Special Relief Petition BSR-001, Order, 18 FCC Rcd. 10,662 (MB 2003) (*Azteca Order*) (granting a permanent waiver of the rule to affiliates of Azteca America); *Liberman Television LLC Petition for Waiver of Section 73.658(i) of the Commission's Rules*, MB Docket No. 09-192, Order, 25 FCC Rcd. 4725 (MB 2010) (*Estrella Order*) (granting a permanent waiver of the rule to affiliates of Estrella); *Spanish Broadcasting System, Inc. Petition for Waiver of Section 73.658(i) of the Commission's Rules*, MB Docket No. 10-89, Order, 26 FCC Rcd. 16,911 (MB 2011) (*MegaTV Order*) (granting a permanent waiver of the rule to affiliates of MegaTV); and *Mambo, LLC Petition for Waiver of Section 73.658(i) of the Commission's Rules*, MB Docket No. 10-161, Order, 26 FCC Rcd. 16,900 (MB 2011) (*GenTV Order*) (granting a permanent waiver of the rule to affiliates of GenTV).

<sup>7</sup> *Univision and Telemundo Waiver Order* at 7281.

<sup>8</sup> See cases cited at n.6, *supra*.

<sup>9</sup> See *Azteca Order* at 10663 (Azteca argued that absent national coordination, resources are not available to their affiliates to market national spot advertising competitively); *Estrella Order* at 4726 (Liberman argued that "waivers are still necessary across the Spanish-language broadcasting industry because stations targeting Spanish-speaking audiences may earn less revenue per viewer than those broadcasting in English"); *MegaTV Order* at 16,912 (SBS argued that "traditional sales firms lack the necessary market expertise to effectively represent the specific interests of the Spanish-language market."); *GenTV Order* at 16,901 (Mambo contended that "many GenTV affiliates lack the 'experience and resources' to market themselves to advertisers.").

<sup>10</sup> *Univision and Telemundo Waiver Order* at 7281; *Azteca Order* at 10663.

<sup>11</sup> *Estrella Order* at 4726 (citing *Azteca Order* at 10,663).

<sup>12</sup> Petition at 2.

<sup>13</sup> *Id.* at 6.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.* at 9-10.

networks” and thereby avoid a “significant disadvantage in recruiting potential station partners.”<sup>16</sup> This would allow MundoFox to “deliver original Spanish-language programming, much of it never before seen in the United States . . . and increase the number and variety of Spanish-language public-interest programming options available.”<sup>17</sup> Fox also maintains that there will be no harm to the public interest as a result of the waiver,<sup>18</sup> and that it will increase program diversity and competition in the “Spanish-language network marketplace.”<sup>19</sup> As noted above, all comments we received supported the Petition.

5. For the same reasons the Commission granted waivers to existing Spanish-language broadcast networks, and in recognition of the competitive imbalance that could result in the absence of a waiver, the Bureau finds good cause to grant MundoFox-affiliated stations a permanent waiver of the network representation prohibition in Section 73.658(i) of the Commission’s rules.<sup>20</sup>

6. Accordingly, IT IS ORDERED that the Petition for Waiver of Section 73.658(i) of the Commission’s rules filed by Fox Networks Group, Inc. IS GRANTED.

7. This action is taken pursuant to authority delegated by Sections 0.61(h) and 0.283 of the Commission’s rules, 47 C.F.R. §§ 0.61(h), 0.283.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake  
Chief, Media Bureau

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<sup>16</sup> *Id.* at 13.

<sup>17</sup> *Id.* at 11.

<sup>18</sup> *Id.* at 14.

<sup>19</sup> *Id.* at 11.

<sup>20</sup> 5 U.S.C. § 553(b)(3)(B). The Commission may waive its rules where good cause is shown. *See* 47 C.F.R. § 1.3; *Wait Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).